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CITY OF BURBANK, including the Police
Department of the City of Burbank

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-
GOMEZ; STEVE KARAGIOSIAN;
ELFEGO RODRIGUEZ; AND JAMAL
CHILDS,

Plaintiffs,

-VS-

BURBANK POLICE DEPARTMENT;
CITY OF BURBANK; TIM STEHR;
KERRY SCHILF; JAMIE "J.J." PUGLISI;
DAN YADON; KELLY FRANK; PAT
LYNCH; MIKE PARRINELLO; AARON
KENDRICK; DARIN RYBURN; AND
DOES 1 THROUGH 100, INCLUSIVE.

Defendants.

CASE NO: BC 414602

[Assigned to Hon. Joanne O'Donnell,
Dept. 37]

**DEFENDANT CITY OF BURBANK'S
PROPOSED JURY INSTRUCTIONS**

Date: June 8, 2011

Time: 9:00 a.m.

Dept: 37

Trial Date: June 8, 2011 (Karagiosian)
July 27, 2011 (O. Rodriguez)
Action filed: May 28, 2009

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

2 Pursuant to Los Angeles Superior Court Local Rule 7.9(h), Defendant City of
3 Burbank respectfully requests the attached jury instructions necessitated by the issues
4 involved in this case. Burbank reserves its right to modify, add to, or withdraw these
5 instructions up to and during the time of trial.
6

7 DATED: May 6, 2011

BALLARD ROSENBERG GOLPER & SAVITT, LLP

9
10 By: 

PHILIP L. REZNIK

11 Attorneys for Defendant

12 CITY OF BURBANK, including the Police
13 Department of the City of Burbank
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100
Preliminary Admonitions (Rev. 12/2009)

Instruction
No. 100

Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				Judge	

Instruction
No. 100

You have now been sworn as jurors in this case. I want to impress on you the seriousness and importance of serving on a jury. Trial by jury is a fundamental right in California. The parties have a right to a jury that is selected fairly, that comes to the case without bias, and that will attempt to reach a verdict based on the evidence presented. Before we begin, I need to explain how you must conduct yourselves during the trial.

Do not allow anything that happens outside this courtroom to affect your decision. During the trial do not talk about this case or the people involved in it with anyone, including family and persons living in your household, friends and co-workers, spiritual leaders, advisors, or therapists.

This prohibition is not limited to face-to-face conversations. It also extends to all forms of electronic communications. Do not use any electronic device or media, such as a cell phone or smart phone, PDA, computer, the Internet, any Internet service, any text or instant-messaging service, any Internet chat room, blog, or Web site, including social networking websites or online diaries, to send or receive any information to or from anyone about this case or your experience as a juror until after you have been discharged from your jury duty.

You may say you are on a jury and how long the trial may take, but that is all. You must not even talk about the case with the other jurors until after I tell you that it is time for you to decide the case.

During the trial you must not listen to anyone else talk about the case or the people involved in the case. You must avoid any contact with the parties, the

100
Preliminary Admonitions (Rev. 12/2009)

Instruction

No. 100 (Continued)

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				Judge	

Instruction

No. 100 (Continued)

lawyers, the witnesses, and anyone else who may have a connection to the case. If anyone tries to talk to you about this case, tell that person that you cannot discuss it because you are a juror. If he or she keeps talking to you, simply walk away and report the incident to the court [attendant/bailiff] as soon as you can.

After the trial is over and I have released you from jury duty, you may discuss the case with anyone, but you are not required to do so.

During the trial, do not read, listen to, or watch any news reports about this case. [I have no information that there will be news reports concerning this case.] This prohibition extends to the use of the Internet in any way, including reading any blog about the case or about anyone involved with it or using Internet maps or mapping programs or any other program or device to search for or to view any place discussed in the testimony.

You must decide this case based only on the evidence presented in this trial and the instructions of law that I will provide. Nothing that you see, hear, or learn outside this courtroom is evidence unless I specifically tell you it is. If you receive any information about this case from any source outside of the courtroom, promptly report it to the court [attendant/bailiff]. It is important that all jurors see and hear the same evidence at the same time.

Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. If you do need to view the scene during the trial, you will be taken there as a group under proper supervision.

100
Preliminary Admonitions (Rev. 12/2009)

Instruction

No. 100 (Continued)

Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Judge

Instruction

No. 100 (Continued)

It is important that you keep an open mind throughout this trial. Evidence can only be presented a piece at a time. Do not form or express an opinion about this case while the trial is going on. You must not decide on a verdict until after you have heard all the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

Do not concern yourselves with the reasons for the rulings I will make during the course of the trial. Do not guess what I may think your verdict should be from anything I might say or do.

When you begin your deliberations, you may discuss the case only in the jury room and only when all the jurors are present.

You must decide what the facts are in this case. And, I repeat, your verdict must be based only on the evidence that you hear or see in this courtroom. Do not let bias, sympathy, prejudice, or public opinion influence your verdict.

At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law.

101
Overview of Trial (Rev. 6/2010)

Instruction
No. 101

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Authorities: CACI 101 (as modified).

Judge

Instruction
No. 101

To assist you in your tasks as jurors, I will now explain how the trial will proceed. I will begin by identifying the parties to the case. Steve Karagiosian filed this lawsuit. He is called a plaintiff. He seeks damages from the City of Burbank, who is called a defendant.

First, each side may make an opening statement, but neither side is required to do so. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. Also, because it is often difficult to give you the evidence in the order we would prefer, the opening statement allows you to keep an overview of the case in mind during the presentation of the evidence.

Next, the jury will hear the evidence. Officer Karagiosian will present evidence first. When Officer Karagiosian is finished, Burbank will have an opportunity to present evidence.

Each witness will first be questioned by the side that asked the witness to testify. This is called direct examination. Then the other side is permitted to question the witness. This is called cross-examination.

Documents or objects referred to during the trial are called exhibits. Exhibits are given a number so that they may be clearly identified. Exhibits are not evidence until I admit them into evidence. During your deliberations, you will be able to look at all exhibits admitted into evidence.

There are many rules that govern whether something will be admitted into evidence. As one side presents evidence, the other side has the right to object and to ask me to decide if the evidence is permitted by the rules. Usually, I will decide

101
Overview of Trial (Rev. 6/2010)

Instruction

No. 101 (Continued)

Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Instruction

No. 101 (Continued)

immediately, but sometimes I may have to hear arguments outside of your presence.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments. What the parties say in closing argument is not evidence. The arguments are offered to help you understand the evidence and how the law applies to it.

102
Taking Notes During the Trial (Rev. 12/2007)

Instruction
No. 102

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: CACI 102.

Instruction
No. 102

You have been given notebooks and may take notes during the trial. Do not take the notebooks out of the courtroom or jury room at any time during the trial. You may take your notes into the jury room during deliberations.

You should use your notes only to remind yourself of what happened during the trial. Do not let your note-taking interfere with your ability to listen carefully to all the testimony and to watch the witnesses as they testify. Nor should you allow your impression of a witness or other evidence to be influenced by whether or not other jurors are taking notes. Your independent recollection of the evidence should govern your verdict, and you should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

[The court reporter is making a record of everything that is said. If during deliberations you have a question about what the witness said, you should ask that the court reporter's records be read to you. You must accept the court reporter's record as accurate.]

At the end of the trial, your notes will be [collected and destroyed/
collected and retained by the court but not as a part of the case record/ *[specify other disposition]*].

104
Non-Person Party

Instruction
No. 104

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Authorities: CACI 104.

Instruction
No. 104

A city, City of Burbank, is a party in this lawsuit. City of Burbank is entitled to the same fair and impartial treatment that you would give to an individual. You must decide this case with the same fairness that you would use if you were deciding the case between individuals.

When I use words like "person" or "he" or "she" in these instructions to refer to a party, those instructions also apply to City of Burbank.

106
Evidence (Rev. 2/2010)

Instruction
No. 106

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: CACI 106.

Instruction
No. 106

Sworn testimony, documents, or anything else may be admitted into evidence. You must decide what the facts are in this case from the evidence you see or hear during the trial. You may not consider as evidence anything that you see or hear when court is not in session, even something done or said by one of the parties, attorneys, or witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys will talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence.

The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's question suggests that it is true. However, the attorneys for both sides can agree that certain facts are true. This agreement is called a "stipulation." No other proof is needed and you must accept those facts as true in this trial.

Each side has the right to object to evidence offered by the other side. If I do not agree with the objection, I will say it is overruled. If I overrule an objection, the witness will answer and you may consider the evidence. If I agree with the objection, I will say it is sustained. If I sustain an objection, you must ignore the question. If the witness did not answer, you must not guess what he or she might have said or why I sustained the objection. If the witness has already answered, you must ignore the answer.

An attorney may make a motion to strike testimony that you have heard. If I grant the motion, you must totally disregard that testimony. You must treat it as

106
Evidence (Rev. 2/2010)

Instruction

No. 106 (Continued)

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Instruction

No. 106 (Continued)

though it did not exist.

107
Witnesses (Rev. 4/2007)

Instruction
No. 107

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Authorities: CACI 107.

Instruction
No. 107

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

- (a) How well did the witness see, hear, or otherwise sense what he or she described in court?
- (b) How well did the witness remember and describe what happened?
- (c) How did the witness look, act, and speak while testifying?
- (d) Did the witness have any reason to say something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?
- (e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified

107
Witnesses (Rev. 4/2007)

Instruction

No. 107 (Continued)

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Instruction

No. 107 (Continued)

untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased in favor of or against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, or socioeconomic status.

112
Questions From Jurors (Rev. 4/2009)

Instruction
No. 112

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Authorities: CACI 112.

Instruction
No. 112

If, during the trial, you have a question that you believe should be asked of a witness, you may write out the question and send it to me through my courtroom staff. I will share your question with the attorneys and decide whether it may be asked.

Do not feel disappointed if your question is not asked. Your question may not be asked for a variety of reasons. For example, the question may call for an answer that is not allowed for legal reasons. Also, you should not try to guess the reason why a question is not asked or speculate about what the answer might have been. Because the decision whether to allow the question is mine alone, do not hold it against any of the attorneys or their clients if your question is not asked.

Remember that you are not an advocate for one side or the other. Each of you is an impartial judge of the facts. Your questions should be posed in as neutral a fashion as possible. Do not discuss any question asked by any juror with any other juror until after deliberations begin.

113
Bias (New 6/2010)

Instruction
No. 113

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: CACI 113.

Instruction
No. 113

Each one of us has biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases.

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision.

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party or witness.

Bench Conferences and Conferences in Chambers (New 12/2010)**Instruction****No. 114**

Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
Judge					

Authorities: CACI 114.

Instruction**No. 114**

From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess to discuss matters outside of your presence. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence. Do not be concerned about our discussions or try to guess what is being said.

I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of my view of the evidence.

Obligation to Prove--More Likely True Than Not True (Rev. 2/2005)

Instruction
No. 200

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Instruction
No. 200

A party must persuade you, by the evidence presented in court, that what he or she is required to prove is more likely to be true than not true. This is referred to as "the burden of proof."

After weighing all of the evidence, if you cannot decide that something is more likely to be true than not true, you must conclude that the party did not prove it. You should consider all the evidence, no matter which party produced the evidence.

In criminal trials, the prosecution must prove that the defendant is guilty beyond a reasonable doubt. But in civil trials, such as this one, the party who is required to prove something need prove only that it is more likely to be true than not true.

208
Deposition as Substantive Evidence

Instruction
No. 208

Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: CACI 208.

Instruction
No. 208

During the trial, you heard testimony read from a deposition. A deposition is the testimony of a person taken before trial. At a deposition the person is sworn to tell the truth and is questioned by the attorneys. You must consider the deposition testimony that was read to you in the same way as you consider testimony given in court.

212
Statements of a Party Opponent

Instruction
No. 212

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: CACI 212.

Instruction
No. 212

A party may offer into evidence any oral or written statement made by an opposing party outside the courtroom.

When you evaluate evidence of such a statement, you must consider these questions:

1. Do you believe that the party actually made the statement? If you do not believe that the party made the statement, you may not consider the statement at all.

2. If you believe that the statement was made, do you believe it was reported accurately?

You should view testimony about an oral statement made by a party outside the courtroom with caution.

215
Exercise of a Communication Privilege

Instruction
No. 215

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Authorities: CACI 215.

Instruction
No. 215

People have a legal right not to disclose what they told their attorney in confidence because the law considers this information privileged. People may exercise this privilege freely and without fear of penalty.

You must not use the fact that a witness exercised this privilege to decide whether he or she should be believed. Indeed, you must not let it affect any of your decisions in this case.

219
Expert Witness Testimony

Instruction
No. 219

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: CACI 219.

Instruction
No. 219

During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in his or her field of expertise even if he or she has not witnessed any of the events involved in the trial.

You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony. In deciding whether to believe an expert's testimony, you should consider:

- a. The expert's training and experience;
- b. The facts the expert relied on; and
- c. The reasons for the expert's opinion.

220
Experts—Questions Containing Assumed Facts

Instruction
No. 220

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Authorities: CACI 220.

Instruction
No. 220

The law allows expert witnesses to be asked questions that are based on assumed facts. These are sometimes called “hypothetical questions.”

In determining the weight to give to the expert's opinion that is based on the assumed facts, you should consider whether the assumed facts are true.

221
Conflicting Expert Testimony

Instruction
No. 221

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: CACI 221.

Instruction
No. 221

If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the experts' qualifications.

5000
Duties of the Judge and Jury (Rev 12/2009)

Instruction
No. 5000

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Instruction
No. 5000

Members of the jury, you have now heard all the evidence [and the closing arguments of the attorneys]. [The attorneys will have one last chance to talk to you in closing argument. But before they do, it] [It] is my duty to instruct you on the law that applies to this case. You must follow these instructions [as well as those that I previously gave you]. You will have a copy of my instructions with you when you go to the jury room to deliberate. [I have provided each of you with your own copy of the instructions.] [I will display each instruction on the screen.]

You must decide what the facts are. You must consider all the evidence and then decide what you think happened. You must decide the facts based on the evidence admitted in this trial. Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. [Do not read, listen to, or watch any news accounts of this trial.] You must not let bias, sympathy, prejudice, or public opinion influence your decision.

I will now tell you the law that you must follow to reach your verdict. You must follow the law exactly as I give it to you, even if you disagree with it. If the attorneys [have said/say] anything different about what the law means, you must follow what I say. In reaching your verdict, do not guess what I think your verdict should be from something I may have said or done.

Pay careful attention to all the instructions that I give you. All the

5000
Duties of the Judge and Jury (Rev 12/2009)

Instruction

No. 5000 (Continued)

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				Judge	

Instruction

No. 5000 (Continued)

instructions are important because together they state the law that you will use in this case. You must consider all of the instructions together:

After you have decided what the facts are, you may find that some instructions do not apply. In that case, follow the instructions that do apply and use them together with the facts to reach your verdict.

If I repeat any ideas or rules of law during my instructions, that does not mean that these ideas or rules are more important than the others. In addition, the order in which the instructions are given does not make any difference.

[Most of the instructions are typed. However, some handwritten or typewritten words may have been added, and some words may have been deleted. Do not discuss or consider why words may have been added or deleted. Please treat all the words the same, no matter what their format. Simply accept the instruction in its final form.]

2521A**Hostile Work Environment Harassment [Ethnicity]--Conduct Directed at Plaintiff--Essential Factual Elements--Employer or Entity Defendant (Gov. Code, § 12940(j)) (Rev. 12/2007)**

Instruction

No. 2521A

Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
Judge					

Authorities: CACI 2521A (as modified).

Instruction

No. 2521A

Officer Karagiosian's claim is that he was subjected to harassment based on his ethnicity in violation of the Fair Employment and Housing Act ("FEHA"). To establish this claim, Officer Karagiosian must prove all of the following by a preponderance of the evidence:

1. That Officer Karagiosian filed a verified complaint with the Department of Fair Employment and Housing ("DFEH");
2. That Officer Karagiosian was subjected to unwelcome harassing conduct because of his Armenian ethnicity;
3. That the harassing conduct was severe or pervasive;
4. That a reasonable person in Officer Karagiosian's circumstances would have considered the work environment to be hostile or abusive;
5. That Officer Karagiosian considered the work environment to be hostile or abusive;
6. That Burbank or its supervisors or agents knew or should have known of the conduct and failed to take prompt and appropriate corrective action;
7. That Officer Karagiosian was harmed; and
8. That the conduct was a substantial factor in causing Officer Karagiosian's harm.

430
Causation: Substantial Factor (Rev. 12/2009)

Instruction
No. 430

Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Instruction
No. 430

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.

3900
Introduction to Tort Damages--Liability Contested

Instruction
No. 3900

Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
_____ Judge					

Authorities: CACI 3900.

Instruction
No. 3900

If you decide that Officer Karagiosian has proved his claim against Burbank, you also must decide how much money will reasonably compensate Officer Karagiosian for the harm. This compensation is called "damages."

The amount of damages must include an award for each item of harm that was caused by Burbank's wrongful conduct, even if the particular harm could not have been anticipated.

Officer Karagiosian does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

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3905
Items of Noneconomic Damage

Instruction
No. 3905

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Authorities: CACI 3905.

Instruction
No. 3905

The following are the specific items of noneconomic damages claimed by
Officer Karagiosian:

3905A**Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage) (Rev 12/2009)**

Instruction

No. 3905A

Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: CACI 3905A.

Instruction

No. 3905A

Past and future physical pain/mental suffering/loss of enjoyment of life/inconvenience/grief/anxiety/humiliation/emotional distress.

No fixed standard exists for deciding the amount of these noneconomic damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

To recover for future non-economic damages, Officer Karagiosian must prove that he is reasonably certain to suffer that harm.

For future non-economic damages, determine the amount in current dollars paid at the time of judgment that will compensate Officer Karagiosian for future pain and suffering. This amount of noneconomic damages should not be further reduced to present cash value because that reduction should only be performed with respect to economic damages.

3924
No Punitive Damages

Instruction
No. 3924

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Authorities: CACI 3924.

Instruction
No. 3924

You must not include in your award any damages to punish or make an example of Burbank. Such damages would be punitive damages, and they cannot be a part of your verdict. You must award only the damages that fairly compensate Officer Karagiosian for his loss.

3925
Arguments of Counsel Not Evidence of Damages

Instruction
No. 3925

Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Authorities: CACI 3925.

Instruction
No. 3925

The arguments of the attorneys are not evidence of damages. Your award must be based on your reasoned judgment applied to the testimony of the witnesses and the other evidence that has been admitted during trial.

3964

Jurors Not to Consider Attorney Fees and Court Costs (New 6/2006)

Instruction
No. 3964

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
				_____ Judge	

Authorities: CACI 3964.

Instruction
No. 3964

You must not consider, or include as part of any award, attorney fees or expenses that the parties incurred in bringing or defending this lawsuit.

5012
Introduction to Special Verdict Form (Rev 12/2009)

Instruction
No. 5012

Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Instruction
No. 5012

I will give you [a] verdict form[s] with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form[s] carefully. You must consider each question separately. Although you may discuss the evidence and the issues to be decided in any order, you must answer the questions on the verdict form[s] in the order they appear. After you answer a question, the form tells you what to do next. All 12 of you must deliberate on and answer each question. At least 9 of you must agree on an answer before all of you can move on to the next question. However, the same 9 or more people do not have to agree on each answer.

When you have finished filling out the form[s], your presiding juror must write the date and sign it at the bottom [of the last page] and then notify the [bailiff/clerk/court attendant] that you are ready to present your verdict in the courtroom.

SPECIAL INSTRUCTION

Redactions

Special Instructions No. <u>1</u>					
Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
Judge					

Authorities:

Instruction

No. 1

Some documents presented in this case have been redacted to remove certain private information from them. Do not draw any conclusions from the redactions or attempt to guess what information may have been redacted.

SPECIAL INSTRUCTION

Failure to File Verified Administrative Complaint (Gov. Code § 129609(b))

Special Instructions No. <u>2</u>	
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Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		Judge			
Withdrawn					

Authorities: Cal. Govt. Code § 12960(b); *Okoli v. Lockheed Technical Operations Co.*, 36 Cal. App. 4th 1607, 1613 (1995);
Blum v. Superior Court, 141 Cal. App. 4th 418, 428 (2006).

Instruction

No. 2

In order to sustain the claim, Officer Karagiosian must have filed a verified administrative complaint with the Department of Fair Employment and Housing ("DFEH"). The DFEH complaint must have been verified under penalty of perjury by Officer Karagiosian personally or by Officer Karagiosian's attorney. If Officer Karagiosian's attorney verified the DFEH complaint, then the attorney must have identified him or herself as the person verifying the complaint.

SPECIAL INSTRUCTION

Objectively And Subjectively Hostile or Abusive

Special Instructions			
No. <u>3</u>			
Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>
Given as Requested		Given as Modified	
Refused		Judge	
Withdrawn			

Authorities: Model Jury Instructions – Emp. Litigation Section 1.04(3) (as modified)

Instruction

No. 3

You must determine not only that the environment is one that Officer Karagiosian himself subjectively perceived to be hostile and abusive, but also that it is one that a reasonable person would likewise find hostile or abusive. This must be evaluated from the perspective of a reasonable person, not from the perspective of an overly sensitive person.

SPECIAL INSTRUCTION

"Because of" Ethnicity or Gender

Special Instructions No. <u>4</u>	
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Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Judge

Authorities: California Govt. Code Section 12940(j)(1); *Lyle v. Warner Bros. Television Productions*, 38 Cal. 4th 264, 279-283, 286-289 (2006)

Instruction

No. 4

You should not consider any conduct to be harassing conduct unless that conduct was because of Officer Karagiosian's Armenian ethnicity.

A harassment claim is not established where a supervisor or coworker simply uses crude or inappropriate language. The Fair Employment and Housing Act, which prohibits harassment, is not a "civility code" and is not designed to rid the workplace of vulgarity. It does not outlaw coarse and vulgar language or conduct that merely offends. The burden is on Officer Karagiosian to prove that any conduct which he claims was harassing conduct was because of the fact that he is Armenian.

SPECIAL INSTRUCTION

"Severe Or Pervasive" Explained

Special Instructions	
No. <u>5</u>	

Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					
					Judge

Authorities: CACI 2524 (as modified); *Etter v. Veriflo Corp.*, 67 Cal. App. 4th 457, 465-467 (1998); *Mokler v. County of Orange*, 157 Cal. App. 4th 121, 142 (2007); *Lyle v. Warner Brothers Television Productions*, 38 Cal. 4th 264, 283 (2006); *Fisher v. San Pedro Peninsula Hospital*, 214 Cal. App. 3d 590, 609-610 (1989).

Instruction

No. 5

In order to find in favor of Officer Karagiosian on his claim of harassment based on his Armenian ethnicity, you must find that Officer Karagiosian has proved that the ethnically-based conduct complained of was sufficiently severe or pervasive to alter the conditions of employment. In order to find that ethnic harassment is "sufficiently severe or pervasive," the acts of ethnic harassment cannot be occasional, isolated, sporadic, or trivial.

SPECIAL INSTRUCTION

Prompt And Appropriate Corrective Action

Special Instructions			
No. <u>6</u>			
Requested by Plaintiff		Requested by Defendant	x
Given as Requested		Given as Modified	
Refused			
Withdrawn			
			Judge

Authorities: *Bradley v. Department of Corrections & Rehabilitation*, 158 Cal. App. 4th 1612, 1630-1631 (2008);
Swenson v. Potter, 271 F.3d 1184, 1192 (9th Cir. Cal. 2001).

Instruction

No. 6

“Prompt and appropriate corrective action” means action that is
reasonably calculated to end the harassment.

SPECIAL INSTRUCTION

Evidence of Harassment

Special Instructions			
No. <u>7</u>			
Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>
Given as Requested		Given as Modified	
Refused			
Withdrawn			
			Judge

Authorities: *Lyle v. Warner Brothers Television Productions*, 38 Cal. 4th 264, 291 (2006); *Carter v. Ball*, 33 F.3d 450, 461-62 (4th Cir. 1994); *Beyda v. City of Los Angeles*, 65 Cal.App.4th 511, 518-522 (1998)

Instruction

No. 7

General allegations which are not substantiated by accounts of specific dates, times or circumstances do not suffice to establish an actionable claim of harassment. Likewise, mere workplace gossip about harassment of others, and of a plaintiff's awareness of that harassment, is not a substitute for proof.

SPECIAL INSTRUCTION

Continuing Violation

Special Instructions			
No. <u>8</u>			
Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>
Given as Requested		Given as Modified	
Refused		Requested by Given on Court's Motion	
Withdrawn			
			Judge

Authorities: CACI No. 2508 (2011) (modified); Cal. Gov't Code §§ 12940 et seq.; *Richards v. CH2M Hill, Inc.*, 26 Cal. 4th 798, 823 (2001).

Instruction

No. 8

A person may only bring a harassment claim under FEHA if he files a DFEH Complaint within one year. This means that in determining whether any harassing conduct was severe and pervasive, you may only consider:

1. Harassing conduct which occurred within one year of the date Officer Karagiosian filed his DFEH complaint on May 27, 2009 (i.e., on or after May 27, 2008); and
2. Harassing conduct which occurred before May 27, 2008 but which, when taken in combination with harassing conduct which occurred after May 27, 2008, formed a continuing violation.

In order to establish that conduct formed a continuing violation, the burden is on Officer Karagiosian to prove by a preponderance of the evidence that:

1. The harassing conduct occurring before May 27, 2008 was similar in kind to the conduct occurring on or after May 27, 2008;
2. The conduct was reasonably frequent; and
3. The conduct had not yet become permanent.

"Permanent" in this context means that the conduct has stopped or that the circumstances would make it clear to a reasonable employee that any further efforts to resolve the issue internally would be futile.

SPECIAL INSTRUCTION

Avoidable Consequences Doctrine

Special Instructions			
No. <u>9</u>			
Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>
Given as Requested		Given as Modified	
Refused			
Withdrawn		Judge _____	

Authorities: CACI 2526 (as modified); *State Dept. of Health Services v. Superior Court*, 31 Cal. 4th 1026, 1043-1044 (2003).

Instruction

No. 9

Burbank claims that Officer Karagiosian could have avoided some or all of any harm he suffered as a result of ethnic harassment if he had made a reasonable effort to do so. To prove this, Burbank must prove all of the following:

1. That Burbank had harassment complaint procedures in place and took reasonable steps to prevent and correct workplace harassment;
2. That Officer Karagiosian unreasonably failed to use Burbank's harassment complaint procedures; and
3. That the reasonable use of Burbank's procedures would have prevented some or all of any harm caused to Officer Karagiosian.

You should consider the reasonableness of Officer Karagiosian's actions in light of the circumstances facing him at the time, including his ability to report the conduct without facing undue risk, expense or humiliation.

If you decide that Burbank has proven that Officer Karagiosian unreasonably failed to use Burbank's harassment complaint procedures, you should not include in your award of damages the amount of damages that Officer Karagiosian could have avoided.

SPECIAL INSTRUCTION

Failure to Prevent – Harassment, Retaliation, or Discrimination Must Have Occurred

Special Instructions			
No. <u>10</u>			
Requested by Plaintiff		Requested by Defendant	x
Given as Requested		Given as Modified	
Refused			
Withdrawn			
			Judge

Authorities: *Trujillo v. N. County Transit Dist.*, 63 Cal. App. 4th 280, 289 (1998).

Instruction

No. 10

If you find in favor of Burbank on Officer Karagiosian's claim that he was harassed you must also find in favor of Burbank on Officer Karagiosian's claim for failure to prevent harassment.

SPECIAL INSTRUCTION

Damages Generally

Special Instructions			
No. <u>11</u>			
Requested by Plaintiff		Requested by Defendant	x
Given as Requested		Given as Modified	
Refused			
Withdrawn		Judge	

Authorities

Instruction

No. 11

I am turning now to the question of damages and what can be considered in determining an award of money in this case. By including damages in these instructions, I do not wish to suggest or imply anything about whether liability has been proved or about whether damages have been proved in this case.

SPECIAL INSTRUCTION

No Damages for Conduct Outside the Statute of Limitations

Special Instructions					
No. <u>12</u>					
Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused		Judge			
Withdrawn					

Authorities: *Fisher v. San Pedro Peninsula Hospital*, 214 Cal. App.3d 590, 614, fn. 9 (1989).

Instruction

No. 12

Officer Karagiosian cannot recover any damages for any conduct that occurred outside the statute of limitations period. Accordingly, Officer Karagiosian cannot recover damages for conduct that occurred prior to May 27, 2008.

SPECIAL INSTRUCTION

Damages Cannot Be Speculative

Special Instructions			
No. <u>13</u>			
Requested by Plaintiff		Requested by Defendant	<input checked="checked" type="checkbox"/>
Given as Requested		Given as Modified	
Refused			
Withdrawn			
		Judge	

Authorities: *Piscitelli v. Friedenber*g, 87 Cal. App. 4th 953, 989 (2001); *Clemente v. State of California*, 40 Cal. 3d 202, 219 (1985).

Instruction

No. 13

Damages which are speculative, remote, imaginary, contingent, or merely possible cannot serve as a legal basis for recovery. However, recovery is allowed if claimed benefits are reasonably certain to have been realized but for the wrongful act of the opposing party.

SPECIAL INSTRUCTION

No Emotional Distress Damages Resulting From the Litigation

Special Instructions No. <u>14</u>	
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Requested by Plaintiff		Requested by Defendant	x	Requested by	
Given as Requested		Given as Modified		Given on Court's Motion	
Refused					
Withdrawn					

Judge

Authorities: Cal. Civil Code §47; *Kachig v. Boothe*, 22 Cal. App. 3d 626, 640 (1971) *Silberg v. Anderson*, 50 Cal. 2d 205 (1990).

Instruction

No. 14

Officer Karagiosian cannot recover for any alleged emotional distress resulting from his filing this lawsuit and participating in the litigation process.

SPECIAL INSTRUCTION

No Emotional Distress Damages Not Caused by Defendants

Special Instructions			
No. <u>15</u>			
Requested by Plaintiff		Requested by Defendant	x
Given as Requested		Given as Modified	
Refused			
Withdrawn			
		Judge	

Authorities:

Instruction

No. 15

Officer Karagiosian cannot recover damages for any emotional distress that was not caused by Burbank.

SPECIAL INSTRUCTION

All Instructions Not Necessarily Applicable

Special Instructions			
No. <u>16</u>			
Requested by Plaintiff		Requested by Defendant	x
Given as Requested		Given as Modified	
Refused			
Withdrawn			
			Judge

Authorities:

Instruction

No. 16

The purpose of the Court's instructions is to instruct you as to the applicable law so that you may arrive at a just and lawful verdict. Whether some instructions will apply will depend upon what you find to be the facts. Even though I have instructed you on various subjects, including damages, you must not treat the instruction as indicating the Court's opinion on how you should decide any issue in this case, or as to which party is entitled to your verdict.

SPECIAL INSTRUCTION

No Ethnic Harassment

Special Instructions			
No. <u>17</u>			
Requested by Plaintiff		Requested by Defendant	<input checked="" type="checkbox"/>
Given as Requested		Given as Modified	
Refused		Judge	
Withdrawn			

Authorities: *Etter v. Verillo* (1998) 67 Cal.App.4th 457, 466

Instruction

No. 17

In order to find in favor of Officer Karagiosian on his claim of ethnic harassment, you must find that Officer Karagiosian has proved by a preponderance of the evidence that the ethnically-based conduct complained of was sufficiently severe or pervasive to alter the conditions of his employment. In order to find that ethnic harassment is 'sufficiently severe or pervasive' the acts of ethnic harassment cannot be occasional, isolated, sporadic, or trivial. The circumstances which you may consider include the following: 1. The frequency of the ethnically-based conduct; 2. The severity of the conduct; 3. Whether it was physically threatening or humiliating, or a mere offensive utterance; and 4. Whether the conduct unreasonably interfered with Officer Karagiosian's work performance.